

Hastings District Council

Civic Administration Building
Lyndon Road East, Hastings

Phone: (06) 871 5000

Fax: (06) 871 5100

WWW.hastingsdc.govt.nz

OPEN A G E N D A

COMMISSIONER HEARING MEETING

**(DECISION FROM CRAGGY RANGE TRACK
REMEDATION HEARING HELD ON 11 JUNE 2019)**

Meeting Date: **Tuesday, 11 June 2019**

Time: **9.00am**

Venue: **Council Chamber
Ground Floor
Civic Administration Building
Lyndon Road East
Hastings**

Hearing Commissioners	Chair: Commissioner Paul Cooney Commissioner Rau Kirikiri
Officer Responsible	Group Manager: Planning & Regulatory Services
Reporting Planner	Consultant Planner – Philip Brown
Committee Secretary	Christine Hilton (Extn 5633)

HASTINGS DISTRICT COUNCIL

**A COMMISSIONER HEARING HELD IN THE COUNCIL CHAMBER,
GROUND FLOOR, CIVIC ADMINISTRATION BUILDING,
LYNDON ROAD EAST, HASTINGS
ON TUESDAY, 11 JUNE 2019 AT 9.00AM.**

- 1. APOLOGIES**
- 2. DECISION FROM CRAGGY RANGE TRACK REMEDIATION HEARING
HELD ON 11 JUNE 2019**

**DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS ONE
DOCUMENT**

Document 1 The covering administrative report **Pg 1**

Attachments:

- | | | | |
|---|--|------------|------|
| 1 | Attachment 1 - Updated decision with two minor
corrections (issued 17/7/19) | 97017#0409 | Pg 3 |
|---|--|------------|------|

REPORT TO: COMMISSIONER HEARING

MEETING DATE: TUESDAY 11 JUNE 2019

**FROM: COMMITTEE SECRETARY
CHRISTINE HILTON**

**SUBJECT: DECISION FROM CRAGGY RANGE TRACK
REMEDIAATION HEARING HELD ON 11 JUNE 2019**

1.0 INTRODUCTION

- 1.1 The purpose of this report is to have a means to put the Commissioner Decision from the Craggy Range Track Remediation Hearing held on 11 June 2019 onto the website following the hearing.
- 1.2 The attached decision is an updated version of the original decision which was amended to include two minor corrections.
- 1.3 Under Section 133A of the Resource Management Act 1991 there is provision for these types of amendments in a decision, if issued within 20 working days of the original decision, to be treated as minor corrections.
- 1.4 The original appeal period (ending on 31 July 2019) is not affected by the minor corrections to the attached Updated Decision.

2.0 RECOMMENDATION

That the Updated Commissioner Decision from the Craggy Range Track Remediation hearing be put onto the website following the hearing on 11 June 2019 so it can be viewed by the Applicant, submitters and members of the public.

Attachments:

- A Updated decision with two minor corrections (issued 97017#0409
17/7/19)

Before Independent Hearing Commissioners
In Hastings

RMA20190006

Under the Resource Management Act 1991

In the matter of an application for resource consent to undertake earthworks required to remove the remaining sections of the Te Mata Peak Track (commonly known as the 'Craggy Range Track')

Between **Hastings District Council**
Applicant

And **Hastings District Council**
Consent Authority

DECISION OF COMMISSIONERS

**UPDATED COPY OF DECISION – AS AMENDED UNDER SECTION
133A OF THE RESOURCE MANAGEMENT ACT 1991**

*The amendments to Paragraph 35 of this decision and to the footer
reference relating to Paragraph 21 (additions shown in italics and
bold and deletions in strikethrough)
are made in accordance with Section 133A of the Resource
Management Act 1991
and approved by the Hearings Commissioners Paul Cooney
(Chair) and Rau Kirikiri on 11 July 2019.*

Legend:

"Māori legend has it that Te Mata Peak is in fact the prone body of a rangatira, Rongokako, the grandfather of Kahungunu - the founding ancestor of the iwi Ngāti Kahungunu. The giant Rongokako was said to have attempted to prove his love for a maiden Hinerākau by biting his way through the hills above Heretaunga so that people could come and go with greater ease. He choked on the earth of what became known as Te Mata o Rongokako (The Face of Rongokako), but which is now referred to simply as Te Mata. European settlers also thought the hills resembled a man lying down, and called him the sleeping giant."

INTRODUCTION:

1. This is an application by the Hastings District Council (HDC) for land use consent to remediate the remaining sections of the Te Mata Peak Track commonly known as the Craggy Range track which was formed as a consented track for public use in late 2017 by the Craggy Range Winery.
2. We should say at the outset that the establishment of the track created a great deal of dissension in the Hawkes Bay Community. There were those who supported the creation of the track as a public amenity but equally there was a great deal of opposition to it for cultural and landscape reasons.
3. It was not easy for us as Commissioners to fully appreciate the depth of public opinion underlying this application, particularly from the local Māori community, who felt aggrieved and offended that the track could be established on a non notified consent basis without any proper consultation with them. They said they had relied on the District Plan to provide protection for Te Mata Peak as a taonga and outstanding natural feature and landscape but felt let down that such a situation could occur to their iconic tipuna (ancestor). We will have more to say on this later in our decision.
4. As a result of the dissension within the community, completion of the track was put on hold and was not fully completed. The track was never formally opened for public use and remained as private land.
5. When the controversy arose Council engaged a range of experts to review the viability of the track including commissioning a report on the health and safety risk to users. That report¹ concluded that the upper section of the track was a safety risk from stones and rocks falling onto the track. The report recommended that the upper section of the track be disestablished. Council then undertook emergency works to remediate the upper 500 metres of the track under s330 of the Resource Management Act 1991 (RMA). Once the remedial work was completed in November 2018, Council applied for and was granted a retrospective consent on the 7th of June 2019.
6. Following on from the completion of the emergency work and the application for retrospective consent for that work, Council also applied for a notified consent to remove the remaining lower portion of the track. This is the application that is currently before us for consideration. We therefore have a situation where the upper 500 metres of the track has been removed, leaving

¹ Frame Group Limited, 24th October 2018.

the lower sections of the track ending three quarters of the way up the eastern face of Te Mata Peak.

THE APPLICATION:

7. This application for resource consent to undertake earthworks to remove the remaining lower sections of the Craggy Range track was publicly notified in February 2019. A total of 26 submissions were received including one late submission which we accepted, with 23 in support and 3 in opposition.
8. We, Paul Cooney and Rauru Kirikiri were appointed as Independent Commissioners by the Hastings District Council, as consent authority, to hear and determine the application.
9. A hearing was held at HDC on the 11th of June and Waimārama Marae on the 12th of June. We undertook a site visit on the 10th of June prior to the commencement of the hearing. The site visit was helpful in assisting us to evaluate the evidence, particularly in relation to the visual prominence of the track on the Te Mata Peak eastern face. We also gained an appreciation of how the track could be remediated by comparing it with the rehabilitated upper portion of the track where the work had been completed in November 2018. From our observations, the visual appearance of the upper section of the track was much less obvious and had almost become fully integrated with the existing land form.
10. In order to assist us to decide this application we received and read the following;
 - The Application and supporting Assessment of Environmental Effects (AEE).
 - The submissions in support and those opposing the application.
 - A s42A Report prepared by an Independent Consultant Planner.
 - The further submissions and evidence presented at the hearing.

THE PROPOSED REMEDIATION WORKS

11. A full description of the proposed works are set out in the AEE and various other reports supporting the application. By way of overview, the works involve dividing the remaining 1335m of track into 3 sections (A,B and C) and;
 - a. Recovering side cast soil and placing it on the bench track;
 - b. Minor trimming of the batter edge above and below the track bench;
 - c. Importing and placing additional fill material on the track bend to supplement the recovered side-cast material;
 - d. Where required, providing a thin layer of top soil and sowing a ryegrass seed mix on all exposed earthwork faces on areas A and B;
 - e. Installing Bio Coir matting over the exposed areas on areas B and C;

- f. Provision of top soil / silt mix on area A and sowing with a rye grass seed mix to marry in with terrace productive pasture;
- g. Placing informal limestone rock armouring in selected locations.

THE STATUS OF THE APPLICATION

- 12. There was some debate during the hearing whether this proposal should be assessed as a restricted discretionary activity or as a full discretionary activity due to an interpretation issue. The debate centred on whether the proposed restoration work involved "cuts with overall vertical extent greater than 1 metre in ONFL1" under Rule EM 12 in Rule Table 27.1.5 of the proposed plan.
- 13. Without needing to set out the competing arguments, we consider a conservative approach is warranted and we have assessed this proposal as a discretionary activity under Rule EM 12.

THE PLANNING CONTROLS AND EXISTING ENVIRONMENT

- 14. We are to assess this proposal under the Proposed District Plan (PDP) rather than the current Operative Plan. This is because there are no appeals against the relevant rules in the PDP relating to this application. In that situation, under s86F of the RMA the PDP is deemed to be the Operative Plan.
- 15. Under the PDP, the entire eastern face of Te Mata Peak is identified as being an outstanding natural landscape (ONL1), with the ridge line being an outstanding natural feature (ONF1). The lower slopes along side Waimarama Road are identified as a significant amenity landscape area (SAL6). The proposed restoration work will take place at the ONL1 and SAL6 areas which are located in the Rural Zone.
- 16. In terms of topography, the track is located on the sloping face of Te Mata Peak on the western side of Waimārama Road and zigzags its way up the increasing steeper slope through the rock outcrops to the Te Mata Peak ridge line. As mentioned earlier, the upper most portion of the track of some 500 metres has been removed under emergency works and the land stabilised and resown with grass seed. Although the track has been used by the public, there has been no legal public access created so the track currently is not a public amenity.

GENERAL LEGAL CONSIDERATIONS

- 17. As a discretionary activity we are obliged to consider under s104 and s104B of the RMA the actual and potential effects of the proposed activity including cumulative effects, any offset or compensation offered by the applicant for any adverse effects caused by the proposal, what the relevant planning provisions say about this type of proposal and any other relevant matters all in which may be evaluated against the Objectives and Policies of the PDP and where appropriate the Act's purpose in Part 2 of the RMA.

THE APPLICANTS CASE AND SUBMISSIONS IN SUPPORT

18. This application is somewhat unusual in that it seeks to disestablish a walking track on the slopes of Te Mata Peak authorised under a non-notified consent.
19. At the outset of its case, the applicant offered to the local community an apology through their Principal Advisor Relationships, Responsiveness and Heritage Dr James Graham². The apology underpins the reason for this application. To provide context we quote part of Dr Graham's apology as follows;

On behalf of Council, I also acknowledge both the individual and collective anxiety, the pain, the hurt and the unnecessary offence that may have been caused to the District. The Hastings District Council apologises profusely to the community for the Council's incorrect processing of the resource consent to allow for the track to be developed, and specifically, I stand here today representing Council and I apologise to Mana Whenua in that the appropriate Marae and Hapu were not consulted, nor engaged. If the resource consenting process had been correctly followed, this whole situation, and the expense of time, commitment, energy, and resource could have been avoided. Once again, on behalf of the Hastings District Council I apologise for the pain and public acrimony that this whole situation has caused.

20. The applicant's case is relatively straight forward. Council is seeking consent to remediate what it considers to be significant adverse cultural and visual effects caused by the formation of the track. The evidence presented in support of the application focuses on defining the potential impact the proposed restoration work would have on the existing landscape qualities of Te Mata and the ancestral relationship tangata whenua have with the area.
21. Ms Rebecca Ryder, the consultant landscape architect for the applicant considers that the formation of the track has resulted in high to very high landscape effects on the outstanding natural feature and landscape of Te Mata. In her view this results from the track being incongruent with the biophysical, sensory and associative values attributed to the site and Te Mata Peak as a whole.³ Those values include tangata whenua's associated values with Te Mata which Ms Ryder describes as follows in her landscape assessment;

An interconnected relationship exists between Tangata Whenua and Te Mata te Tupuna and its broader landscape. This relationship and connection comprises Whakapapa, Mātauranga Māori, Kaitiakitanga, Mauri and Waahi Tapu. These are embedded through the people in Te Reo and expressed in Kōrero, Waiata and Kapa Haka. Te Mata te Tupuna is one of the pillars that separated Papatuanuku from Ranginui.

² Dr Graham was employed by Council in March 2018, subsequent to the grant of consent for the Craggy Range track in October 2017.

³ ~~Para 8 of~~ Part 5.3 of Appendix A to Ms Ryder's Statement of Evidence.

22. By contrast, Ms Ryder is of the opinion that the proposed restoration work will have only temporary moderate adverse visual effects due mainly to the visibility of the coconut matting, but that over a 12 month period its visibility will diminish and integrate with the surrounding pasture cover. She expected that the medium (12 months plus) effects of the work and long term (5 years plus) will decrease to a low level and continue over time to generate a positive landscape and visual effect.
23. Mr Trevor Butler, the Consultant Engineer for the applicant explained in his evidence how the restoration work would be carried out. He also described why the remediation of the track formation is required because if left as it is at present, there is potential for occasional slope failures overtime. Mr Butler considered that without remediation, the existing track formation is likely to trigger ongoing erosion effects on the slopes of Te Mata Peak that may extend well beyond the immediate vicinity of the current track.⁴
24. In terms of providing evidence on the ancestral relationship tangata whenua have with Te Mata and the effects the proposed restoration work on that relationship, the applicant quite properly deferred to those submitters who spoke for tangata whenua in support of the application.
25. At the hearing on Waimārama Marae we heard evidence from Mr Robert MacDonald, a respected elder, on behalf of the Waimārama Marae and Māori Committee, whose people exercise mana whenua and kaitiakitanga over Te Mata Peak and surrounding area. In his evidence Mr MacDonald explained why Te Matā⁵ is considered an ancestor and taonga of the people of Waimārama and that the zigzag scar created by the track could be likened to a ritualistic whakahaehae (laceration). He said the continued existence of the track is deeply offensive and hurtful to the Waimārama community. He then said that harm caused to Te Matā is harm caused to Waimārama. He stated that the track has physically harmed Te Matā; and it has affected the mana and mauri of Te Matā.
26. Mr MacDonald went on to express his disappointment that Council had granted a non-notified consent for the track without any consideration being given to Waimārama's ancestral relationship with Te Matā and their role as kaitiaki of the area. Despite the offence this has caused, Mr MacDonald was prepared to accept on behalf of the people of Waimārama HDC's apology for the way it had processed the original consent application. He however considered the only way to remedy the cultural harm caused was to remove the track altogether.
27. We heard similar evidence from Mārei Apatu for the Te Taiwhenua o Heretaunga Trust. He confirmed that Te Mata is considered an ancestor, a maunga tapu and a taonga, and supported the removal of the track in order to protect and enhance its mana and mauri. The Trust also requested that Council should change the PDP in order to provide greater planning protection for cultural sites and areas of significance.

⁴ Para 4.3 and 4.4 of Mr Butlers Statement of Evidence.

⁵ Mr MacDonald used the term "Te Matā" throughout his presentation, as opposed to the more commonly used "Te Mata" (without the macron). Whilst we accept his explanation for doing so we remain ambivalent on this matter and have elected to use Te Mata for the purposes of consistency in our decision.

28. We also heard from Adele Mohi-McGoverin and Rose Mohi as individual submitters. Both are long term residents of Waimārama and are actively engaged in that community.
29. Ms Mohi-McGoverin described how the Te Mata Peak eastern escarpment is not only considered a significant Māori cultural and spiritual area but it is also viewed as an iconic landmark often photographed to promote the Hawkes Bay Region. She considered the track should not have been approved in the first place, for landscape and cultural reasons.
30. Ms Mohi explained in her submissions the steps she took with the other members of the Waimārama community to voice their objection against the existence of the track. She expressed disappointment that the track had been approved by HDC without any involvement with the Waimārama Marae and broader community. In that respect she referred in her submission to a statement made by an elder some years ago⁶ which we quote;

Today the Māoris' don't own the land. All they own are the traditions. They own the mythical part of Te Mata Peak that still remains but how can that be conveyed to the authorities.

Ms Mohi claims that over 20 years later the Māori community still has difficulty making this point.

31. Both Ms Mohi-McGoverin and Ms Mohi strongly support this application.
32. Other submitters who presented submissions to us on the marae in support of the application were Ms Megan Exton, Counsel for Mr and Mrs P and A Maloney, the Environmental Defence Society, Ngāti Kahungunu Iwi Incorporated and Bruno Chambers.
33. Mr and Mrs Maloney, long term residents of Waimārama who have a widely acknowledged appreciation of the landscape and cultural significance of Te Mata Peak, were unable to be present on the day. On their behalf Legal Counsel Ms Exton provided us with a succinct summary of the evidence and submissions that she said supported consent being granted for the removal of the remaining portion of the track.
34. The Environmental Defence Society (EDS) actively supported the position taken by the Waimārama Marae and Māori Committee in seeking complete removal of the track for cultural and landscape reasons. Mr Rob Enright, Counsel for EDS, made the point in his submissions that this consent application involved two elements, namely recognition and restoration. Recognition that Te Mata has high cultural and landscape values and that the presence of the track on the Te Mata escarpment was having a significant adverse effect on those values. He submitted that restoration involved granting approval for the proposed restoration works which could be considered as a form of restorative justice to correct the harm caused to the people of Waimārama.

35. Ms Diane Lucas a consultant landscape architect ~~for EDS~~ **appearing for the Waimārama Māori Committee of Waimārama Marae**, provided us with a

⁶ Whose name was Tama Tomoana.

comprehensive and helpful review of the landscape values associated with Te Mata Peak including its associative tangata whenua attributes which she rated as being "Very High". Miss Lucas agreed with Miss Ryder that the remaining zigzag track forming part of the existing environment was having a significant adverse impact on the biophysical, sensory and associative attributes of Te Mata all of which make it an outstanding landscape.

36. In assessing the visual effects of the proposed remediation works, Ms Lucas reached the same conclusion as Ms Ryder that the proposed works will have temporary adverse effects that will not be significant, and that once the land is restored and re-grassed, the works will have largely positive landscape effects.
37. Finally in relation to those submitters who supported the application to remove the track, we heard from Bruno Chambers and Ngāti Kahungunu Iwi Incorporated.
38. Mr Chambers has a close family association with Te Mata Peak and is a trustee of the Te Mata Park Trust Board which manages the 99 hectare park located on the western side of Te Mata Peak. Mr Chambers described Te Mata as being probably the most significant landscape in Hawkes Bay and that the existence of the track compromised that landscape. He strongly supported the removal of the track.
39. Ngāti Kahungunu Iwi Incorporated also strongly supported the application. Its chairman Ngāhiwi Tomoana expressed frustration that consent had been granted for the track without consultation with those exercising mana whenua over the area.

CONCERNS RAISED BY SUBMITTERS OPPOSED TO THE APPLICATION

40. There were two submitters who sought the retention of the track. Mr Warwick Marshall submitted the track should be retained for amenity reasons and that any visual effects could be mitigated by planting vegetation. Mr Stuart Perry took a similar position to Mr Marshall and also sought the planting of vegetation to remediate the existence of the track. Mr Perry considered the remedial work to be unnecessary and that the costs of the work would impose an unreasonable financial burden on rate payers. Mr Perry favoured fencing off the track from public access and to let it revert back to its natural state.
41. We also heard from Mr Xan Harding for the Te Mata Peak Peoples Track Society which provided qualified approval for the application but on the basis HDC should commit itself to a process of considering alternative public access tracks on the eastern side of the Te Mata range. However, overall the society supported the application with appropriate conditions and considered it was a necessary and inevitable step to resolve community concerns over the existence of the track.
42. We should acknowledge here that all the submitters who appeared before us presented their submissions in a respectful manner, despite the depth of feeling and diverse views within the community concerning the formation of the track.

OUR EVALUATION OF THE APPLICATION

43. At the outset, we wished to make it clear that it is outside our jurisdiction to determine whether the consent approving the formation of the Craggy Range track should have been granted. We must accept for the purpose of determining this application that the earlier consent was lawfully granted.
44. However we can take into account that the presence of the track forms part of the existing environment and as such the existing landscape and cultural effects from the existence of the track are relevant for measuring the anticipated outcome of the proposed restoration work. Case law has established that the scale of effects of a proposed activity are to be assessed against the effects from lawfully established activities that are already taking place which in this case is the presence of the track on the eastern face of Te Mata Peak. We will now address the anticipated effects of the proposed restoration work.

Landscape and Visual Effects:

45. The evidence we have received and heard in support of this application clearly establishes that Te Mata Peak is an iconic landscape feature in the Hawkes Bay, worthy of its highest category ranking as an outstanding natural feature and landscape in the PDP. As many submitters pointed out, Te Mata Peak is appreciated very highly within the community for its visual qualities and cultural significance. Its iconic status is recognised in Policy LSP2 in the PDP which provides a strong direction that the present landscape qualities of Te Mata Peak should be afforded the highest priority through the District Plan.
46. Both landscape consultants Ms Ryder and Ms Lucas have explained in their evidence the sensitive landscape qualities associated with Te Mata Peak including its ancestral importance to tangata whenua. It is in the context of that sensitive landscape background that both Ms Ryder and Ms Lucas conclude the presence of the track is adversely disrupting the landscape and visual qualities associated with Te Mata. According to Ms Ryder the zigzag track is not sympathetic to the landform and forms a contrasting feature which degrades the aesthetic qualities of the natural landform. Similarly Ms Lucas is of the opinion that the existence of the track disrupts, modifies and intervenes visually in the high intactness of Te Mata. We agree with their assessments. From our own observations of the track it stands out and appears incompatible with the striking landform that represents Te Mata.
47. When we come to consider the proposed restoration work in the context of the existing landscape environment which includes the effects of the existing track that we have described, it is clear to us that so long as the work is undertaken in accordance with the methodology explained by Mr Butler in his evidence, the restoration work will achieve its purpose overtime - which is to reintegrate the landform as near as possible back to its original state.
48. Having carefully considered the application and its supporting evidence, we are satisfied that the visual effects from the zigzag alignment of the track will reduce over time and gradually become indiscernible as the track becomes integrated with the surrounding grass cover. We accept the restoration work will initially have a moderate adverse visual effect mainly from the installation of the coconut matting but as the matting biodegrades its visibility will diminish

within a relatively short period. As illustrative of what can be expected we were shown photos during the hearing of the emergency work undertaken on the upper section of the track where coconut matting had been laid to protect the surface of the restored track until vegetative cover took hold. The coconut matting was very conspicuous when it was first laid but within a little over 6 months the matting had degraded to the extent the track had become almost inconspicuous within the surrounding terrain.

49. Having carefully considered all of the evidence presented in support of this application, we are satisfied the proposed restoration work will result in a significant overall improvement over time to the modified landscape and visual amenity of Te Mata caused by the formation of the track.
50. We have considered closely the submissions presented to us by Mr Marshall and Mr Perry who opposed the need for the restoration work. We are unable to accept their reasons for opposing this application. We agree with Ms Ryder's response that screening the track with vegetation plantings would make the track more obvious unless the whole of eastern face is re-vegetated which is not feasible. Doing nothing by leaving the track to revert naturally to its original condition is also not a viable alternative. As Mr Butler stated in his evidence, if the track is left in its present condition slope failure may occur that could cause visible scars on the Te Mata landscape.
51. Mr Xan Harding for the Te Mata Peak Peoples Track Society asked us to direct Council to consider alternative track options along the eastern side of the Te Mata Range. However, as we explained to Mr Harding during the hearing, the consideration of a replacement track with its associated expense is a policy decision for Council to make. It is not our function to provide directions to Council on such matters. As the society supports this application being granted, the other point made by the Society in its submission that the applicant is obliged to consider alternatives before seeking the removal of the track no longer arises. In any case we are satisfied the obligation to consider alternatives in the AEE assessment does not arise as the proposal does not in itself generate any significant adverse effects. Instead we are satisfied it will achieve a positive outcome.

Māori Cultural and Spiritual Effects:

52. Having considered the submissions presented to us on the marae by the Waimārama and broader Ngāti Kahungunu community, we are left in no doubt that the local iwi and hapū have a very strong cultural and historical relationship with Te Mata Peak and that they are deeply offended by the formation of the track on its eastern face. Unless the track is completely removed, it is evident to us that its presence will continue to perpetuate the hurt so forcefully expressed by submitters.
53. We note the point made by various submitters that Council should have appreciated the cultural and spiritual significance of Te Mata at the time the consent application was lodged with Council and that it should have required the application to be notified. However it is not for us to review the merits of Council's earlier decisions. We do however acknowledge that Council to its credit has apologised for the way it assessed the consent, that it intends to put in place better cultural governance processes, and that it has lodged this restoration application in response to calls by tangata whenua and others within the community for the track to be removed.

54. From a Māori tikanga perspective, we find that if this application is granted it will go a long way towards rectifying the harm caused by the presence of the track on the face of Te Mata and give proper recognition to the close ancestral relationship tangata whenua have with Te Mata Peak.
55. We should record here that we received evidence from Ms Gaylynne Carter, an archaeologist engaged by the applicant. She explained there are recorded archaeological sites located near the track and has advised the applicant to apply for an Archaeological Authority from Heritage New Zealand Pouhere Taonga rather than rely on an accidental discovery protocol condition. The applicant attends to apply for that authority which we hope will be processed and issued expeditiously.

Planning Documents:

56. We have received planning evidence from two planning consultants Ms Janeen Kydd-Smith for the applicant and Mr Phillip Brown as the s42A Reporting officer as well as from Ms Ryder and Ms Lucas the landscape consultants, each of whom has assessed this proposal against the relevant Objectives and Policies in the PDP. Those Objectives and Policies relate mainly to the management of earthworks, the visual effects of an activity and the protection of natural features and landscapes. All of them conclude that this proposal is entirely consistent with the policy framework of the PDP. That is not surprising as the removal of the track with its adverse visual and cultural effects is more aligned with the outcome sought by the plan than its retention, a point made by Mr Brown in his report. In short we are satisfied there is nothing in any of the planning provisions referred to in the assessments undertaken by the planning and landscape consultants that would persuade us to decline this application.
57. Both EDS and the Te Taiwhenua o Heretaunga Trust were critical of the lack of adequate rules and "teeth" in the PDP to protect cultural landscapes of significance to those exercising mana whenua. We note in this respect that despite the strong direction in Policy LSP2, the only controls on development relate to earthworks and even those rules seemed generally permissive. We were told at the conclusion of the hearing that Council is currently undertaking a review of its PDP to consider methods for providing greater protection for Te Mata and other areas of cultural significance. We support that approach given the weight of evidence presented to us that clearly establishes Te Mata Peak is particularly significant to local hapū and is deserving of the highest protection from development. It deserves in our view special consideration.

Other matters:

58. There are no other matters that would influence our decision on this application. Plan integrity and precedent issues do not arise.

OUR OVERALL ASSESSMENT

59. It is clear to us from the submissions we heard that if the remaining sections of the Craggy Range track are allowed to remain on the eastern slopes of Te Mata Peak, the track's presence will continue to cause cultural offence and public acrimony.

60. The purpose of this application is to rectify that situation by restoring the visual qualities of Te Mata Peak that have been modified by the formation of the track and to properly recognise the relationship tangata whenua have with this taonga.
61. Having carefully considered the application and its supporting evidence, we have no reservations in deciding consent should be granted for the restoration work. We are satisfied that so long as the work is managed and maintained through appropriate conditions, a positive landscape and visual outcome is likely to be achieved and the cultural harm will have been addressed or at the very least mitigated. We accept that initially there will be some adverse visual effects from the proposed earth works but those effects will be temporary and are an integral aspect of the remedial work and will soon diminish as grass becomes established along the track alignment.
62. The RMA is about promoting the sustainable management of natural and physical resources and the Objectives and Policies in the PDP are intended to set the framework for achieving that purpose. When we take into account the purpose of this application and what it is likely to achieve, it is obvious to us that granting consent for the restoration work that will result in an improvement to a culturally and visually sensitive landscape that has been modified by the formation of the track is entirely consistent with the Objectives and Policies in the PDP and will meet the Acts purpose, particularly in relation to the strong directions in s6(b) and s6(e) of the Act.
63. Overall we are satisfied consent should be granted for this application subject to the conditions provided to us by the applicant at the end of the hearing. That set of conditions includes some of the amendments sought by EDS that we agree with, including a mauri monitoring protocol condition. In granting this consent we adopt the recommended reasons set out in Mr Browns helpful s42A Report.
64. Our formal decision with conditions and reasons granting this application are attached hereto.

Dated this 4th day of July 2019


PH Cooney
Commissioner / Chairperson


Rauru Kirikiri
Commissioner

DECISION

RMA20190006

- A. That pursuant to Rule EM6 and EM12 of the Proposed Hastings District Plan (As Amended by Decisions 15 September 2015) and Sections 104, 104B and 108 of the Resource Management Act 1991, resource consent as a Discretionary Activity is GRANTED to Hastings District Council to undertake earthworks for the purpose of removing the remaining sections of the Te Mata Peak Track (Craggy Range Track), to reinstate the original contours of the land, and restore the vegetation cover to pasture on a site located at Waimarama Road, Havelock North and legally described as Lot 3 DP 316592 and Lot 3 DP 408476.

SUBJECT TO THE FOLLOWING CONDITIONS:

GENERAL

1. That unless otherwise altered by the consent conditions, the proposal shall proceed in accordance with the plans and information submitted in the application Resource Consent: **RMA20190006**, application received **14 January 2019**, specifically:
 - a) Completed application form (dated 14 January 2019)
 - b) Land use consent and assessment of environmental effects report, prepared by Sage Planning (dated 14 January 2019);
 - c) The methodology set out in the technical specification prepared by Frame Group Limited and referenced as 'Craggy Range Track – Te Mata Peak Partial Track Removal Works', Specification No. FGL 18/033/01 (dated January 2019); and
 - d) Landscape and Visual Effects Assessment, prepared by Boffa Miskell (dated 11 January 2019).
- 1A. Biocoir matting shall only be used in Section C of the track (as identified in Appendix A attached to these conditions), and in locations within Section B (as identified in Appendix A attached to these conditions) where required to control erosion and enhance stability (such as at hairpin bends or areas where overland flow paths exist).

STOCK ACCESS

2. That stock shall be excluded from the remediated sections of the track (sections A, B and C) for an initial period of 12 months from the completion of the works. At the conclusion of this period, a review of the stability of the remediated surface and the extent of grass cover shall be undertaken by the consent holder and the Council shall be advised of the findings. A further period of stock exclusion may be required by the Environmental Consents Manager if required in order to minimise risk of erosion along the former track surface.

WEED MANAGEMENT

3. That weed removal be undertaken as required to keep the former track alignment free of species of weeds unsuitable for agricultural pasture. Regular weed removal shall occur where necessary and appropriate until such time as there is no significant regrowth and the grass cover is fully established across the earthworks area, to the satisfaction of the Environmental Consents Manager (or nominee).

CONSTRUCTION NOISE

5. All construction work shall be conducted to ensure that noise measured at the notional boundary of any dwelling or noise sensitive activity does not exceed the Typical Duration Limits Specified in NZS6803:1999.
6. All construction noise shall be measured in accordance with New Zealand Standard 6803:1999 "Acoustics – Construction Noise."
7. All construction work shall be limited to the hours of 7:00am – 5:00pm Monday to Friday and 8:00am – 5:00pm Saturday (with no work on Sundays or public holidays).

DUST AND DEBRIS

8. That the consent holder shall take all measures necessary to ensure the prevention of dust nuisance on adjacent land owners or occupiers, or the transportation of debris beyond the work area. Measures shall include, but are not limited to, the following:
 - a) During dry windy periods the stockpile and exposed earthworks area shall be covered or moistened as required to prevent dust nuisance.
 - b) Should offensive or objectionable dust be observed beyond the site boundary, the activities generating the dust must cease immediately and must not restart until such time as the dust nuisance has been remedied.
 - c) In the event of mud or other debris being carried off the property and deposited on the public carriageway, the consent holder will arrange for its removal as soon as is reasonably possible.

MANA WHENUA MAURI MONITORING PROTOCOL

- 8A. At least 10 working days prior to the commencement of works, the consent holder shall, in consultation with mana whenua, prepare and submit a Mauri Monitoring Protocol to the Environmental Consents Manager (or nominee) that includes the following:

- a) The names and contact details of the mana whenua, as determined by mana whenua;
- b) The appropriate ceremonial protocols to be implemented prior to commencing the works;
- c) How and when mana whenua will be:
 - i. Notified of the date when the works are due to commence;
 - ii. Notified of the dates when proposed mana whenua site visits will take place and kept informed about the progress of the works;
 - iii. Notified of when the works are due to be completed and involved in any decision-making associated with appropriate ceremonial and protocol arrangements with the completion; and
 - iv. Consulted and engaged at least once a year for a period of two years after the completion of the works about the ongoing state of the remediated track;
- d) The name and contact details of a person representing the consent holder that mana whenua can contact to raise any concerns or complaints they may have during or after the works, and how those contact details (including any updates) will be made available to mana whenua; and
- e) A procedure for recording and responding to any complaints made or concerns raised by mana whenua, including forwarding any complaints relating to compliance with the conditions of this consent to the Environmental Consents Manager (or nominee) within 48 hours of the complaint being received.

LANDSCAPE

- 8B. The consent holder shall engage a suitably qualified and experienced Landscape Architect to undertake the following tasks:
- a) Prior to works commencing:
 - i. Be involved in briefing the selected contractor on the technical specifications (referred to under Condition 1(c)) to ensure that the work (including the placement of rock and Biocoir matting) marries to the natural contour of the land;
 - b) During the works:
 - i. Inspect the works on at least two occasions to confirm that the work is being carried out in accordance with the technical specifications and the Landscape Architect's briefing under Condition 8B(a);
 - c) Within 5 working days of the date of completion of the works undertake a final inspection of the work; and

- d) Within 10 working days of the date of the final inspection under Condition 8B(c), provide written confirmation to the Environmental Consents Manager (or nominee) that the work has been completed to the satisfaction of the Landscape Architect.

MONITORING

9. That a monitoring deposit of \$220 (including GST) shall be payable to cover the reasonable costs of monitoring compliance with the above conditions in accordance with Council's schedule of charges. In the event of non-compliance being detected by monitoring or justified complaint and/or the costs of monitoring consent exceeding the deposit, the costs to Council of any additional monitoring shall be paid by the consent holder in accordance with the Council's advertised schedule of fees.
10. That all costs associated with complying with any or all conditions of this consent shall be borne by the consent holder.

WITH THE REASONS FOR THIS DECISION BEING:

1. The **GENERAL** condition ensures that the development proceeds in accordance with the plans and information submitted and assessed.
2. The **STOCK ACCESS** condition ensures that stock access does not impact on the stability of the earthworks and the establishment of grass cover.
3. The **WEED MANAGEMENT** condition ensures that the establishment of weeds does not compromise grass growth or accentuate the former alignment of the track.
4. The **MANA WHENUA MAURI MONITORING PROTOCOL** condition ensures that any incident involving accidental discovery of koiwi, archaeology or artefacts is appropriately managed and communicated.
5. The **CONSTRUCTION NOISE** conditions ensure that the proposal complies with the New Zealand Standard for Construction Noise (NZS6803:1999).
6. The **DUST AND DEBRIS** condition ensures that any adverse effects resulting from the operation of the proposal do not adversely affect adjacent properties or public roads.
7. The **MONITORING** conditions ensure that the consent holder pays the actual and reasonable charges associated with monitoring the consent and that all conditions of consent are monitored for compliance.
8. The **ADVERSE EFFECTS** of this proposal are not significant, and are acceptable in the circumstances, in that:

Landscape Character and Visual Amenity

- The adverse visual and landscape effects arising from the earthworks required to remove the remainder of the track will be short term and of low magnitude;
- In the context of the existing environment, which includes the effects of the current formed sections of track, the proposed earthworks will facilitate a significant overall improvement in landscape character and visual amenity, particularly over time.

Erosion and Sedimentation

- The methodology for the track removal work incorporates measures to ensure that erosion and sedimentation is managed;
- There is no likelihood of significant erosion or sedimentation occurring and the completed ground profile is expected to remain largely intact even through heavy rain events and overland stormwater flow.

Life Supporting Capacity of Soil Resource

- The temporary loss of productive capacity while stock are prevented from grazing will result in a minimal loss of productive capacity in the context of the District's rural land resource.

Maori Spiritual and Cultural Values

- The earthworks will reduce existing adverse effects on Maori spiritual and cultural values by removing the track, the continued existence of which is strongly opposed by Maori.

9. The proposal is consistent with the **OBJECTIVES, POLICIES** and **OTHER PROVISIONS** of the Proposed Hastings District Plan, in that:

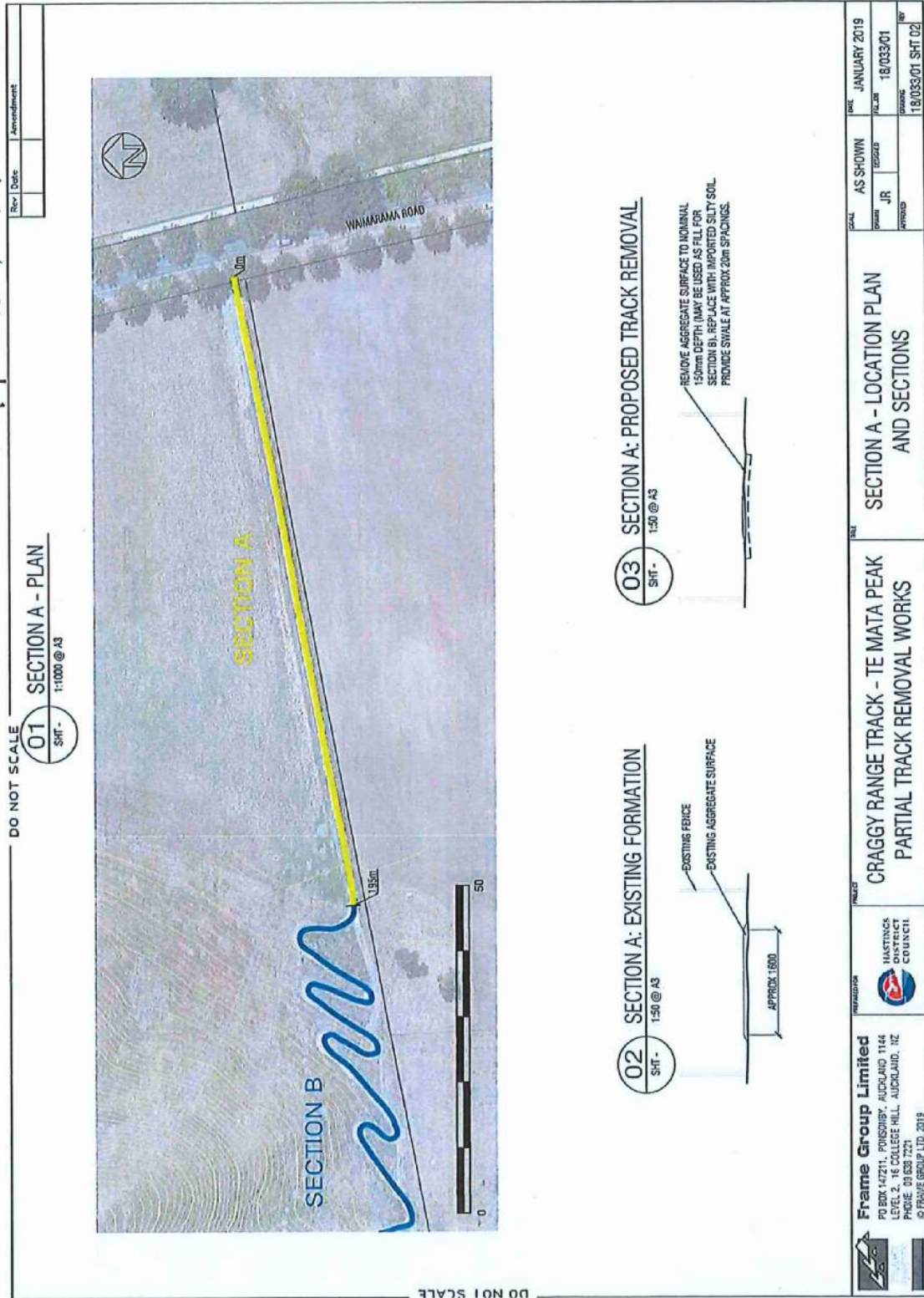
- Any adverse effects on the environment can be mitigated by appropriate conditions, and through the methodology proposed in the application;
- The proposal will remediate existing adverse landscape and visual amenity effects on Te Mata Peak, the landscape qualities of which are afforded the highest level of protection under the Plan's policy framework;

- The proposal will assist in the achievement of outcomes that are more consistent with Maori cultural and spiritual values than the existing situation with the Craggy Range Track in place. Te Mata Peak is a feature of cultural significance to Ngati Kahungunu and hapu, as well as other members of the community, and its remediation is consistent with the objectives and policies of the District Plan;
10. Overall the proposal promotes sustainable management as required by Part 2 of the Resource Management Act 1991 in that:
- It will result in the removal of significant adverse effects on landscape character and amenity, and Maori cultural and spiritual values;
 - Any potential adverse effects of the proposed earthworks can be avoided, remedied or mitigated by conditions of consent.

ADVICE NOTES:

1. *To avoid doubt, except as otherwise allowed by this resource consent, all land uses must comply with all remaining standards and terms of the relevant Hastings District Plan. The proposal must also comply with the Building Act 2004, Engineering Code of Practice and Hawke's Bay Regional Plans. All necessary consents and permits shall be obtained prior to development.*
2. *Under Section 125 of the Resource Management Act 1991 a resource consent will lapse if not given effect to within 5 years of the date the consent was granted, unless an extension is granted under Section 125(1A).*
3. *An approved Archaeological Authority from Heritage New Zealand Pouhere Taonga will be required under the Heritage New Zealand Pouhere Taonga Act 2014 to modify or destroy archaeological sites prior to the commencement of site works.*

Appendix A



Appendix A

